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SUMMARY RECORD OF THE 1249th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 21 July 1993, at 3 p.m.

Chairman: Mr. ANDO

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GE.93-17566 (E)

The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Second periodic report of Bulgaria (CCPR/C/32/Add.17) (continued)

1. Mr. SADI said that it would be unreasonable to expect the punctual submission of a comprehensive report so soon after a complete change of political regime. Nevertheless, he was very pleased to note that Bulgaria appeared to be in general compliance with the requirements of the Covenant. Since the Covenant had acquired the status of domestic law with effect from the coming into force of the new Bulgarian Constitution in 1991, it would be of interest to know whether it had been invoked in the courts up to the present date and to what extent the population was aware of its existence and content. Every effort should be made to publicize the Covenant, not only among the administrative and security services but also among the population as a whole.

2. One interesting question related to the status of the old guard, the representatives of the previous regime, in Bulgaria. He inquired whether they were discriminated against in any way and whether they could stand for office. Had the Communist Party been banned?

3. Mr. FRANCIS said that, although the Bulgarian delegation could certainly plead mitigating circumstances in regard to any shortcomings that the report might display, it was in fact an excellent and informative document. Article 5 (4) of the new 1991 Constitution stated that any international instruments which had been duly ratified, promulgated and brought into force would not only be considered part of the domestic legislation of the country, but would also supersede any domestic legislation stipulating otherwise. Clearly, therefore, the Covenant could be expected to take its appointed place in the hierarchy of Bulgarian legislation and it was reasonable to ask whether it had done so and whether it had been invoked in the courts as a result of the population's awareness of its importance. If not, was any enabling legislation required to permit such invocation?

4. There appeared to be some inconsistency between paragraph 13 of the report, which spoke of the establishment of a Supreme Administrative Court to supervise administrative jurisdiction, and paragraph 34, which referred to that Court exercising judicial oversight as to the precise and equal application of the law in administrative justice and ruling on the legality of acts of the Council of Ministers and the individual ministries, which was a very much more far-reaching mandate. Perhaps that matter could be clarified. He would also like to know more about the procedure for detention followed in practice, which was referred to in paragraphs 79 et seq.

5. Mr. KOULISHEV (Bulgaria) said that, when responding to the questions posed by Committee members, he would on occasion group the replies to certain questions.

6. Mr. DIMITRIJEVIC had asked a question about religious freedom in Bulgaria. Although the majority of Bulgarian nationals were Orthodox

Christians, that did not mean that Orthodox Christianity was regarded as the predominant religion of Bulgaria. It had merely been intended to pay tribute in the Constitution to the religion which had done so much to provide the foundation for the national ethos. Although the existence of an Orthodox Christian majority facilitated the designation of festivals and the proclamation of official holidays, other religious groups were entitled under the Labour Code to celebrate their own religious festivals.

7. In reply to a question on equality between men and women as covered by article 3 of the Covenant, he said that there were two separate aspects of such equality, namely the position set out in formal legislation and the situation in everyday life. The status of women in Bulgaria did not differ greatly from that in other countries, women were in fact at a disadvantage in many spheres of life. Efforts were, however, being made to remedy the situation, and several women's organizations were working energetically to that end at both the local and the national level. There were fewer women members of Parliament than under the previous regime, but they were more active, and the whole process was more democratic. Some professions, for example, teaching and to a lesser extent the law, were almost the exclusive preserve of women. Women also exercised great influence in the Parliamentary Human Rights Commission. In any case, all draft legislation had to be examined to ensure that it did not contain elements of sexual discrimination.

8. Several questions had been asked about the role of the Covenant in domestic legislation and, more specifically, about the precise point at which the Covenant as an international instrument became part of domestic law and to what extent it took precedence over it. The basic principle was that international instruments took precedence over ordinary domestic legislation but not over the Constitution. After some discussion it had been proposed that the date for the acquisition of such precedence should be the date on which the particular international instrument was ratified and promulgated rather than the date of promulgation of the Constitution. An appropriate decision to that effect had been taken by the Constitutional Council. An essential point was that the international instrument should have been legally ratified, promulgated and published, irrespective of whether that had occurred before or after the coming into force of the Constitution. The situation was rather more complicated if the international instrument had not been published, but that was rather more a legal than a human rights problem.

9. Mr. Fodor and other members of the Committee had asked whether any steps had been taken to prevent any recurrence of totalitarian rule, an issue which was linked with the further question of what procedures had been adopted for dealing with proponents and officials of the previous Communist regime. The first step was of course to determine the responsibility of those who had committed crimes during the period of Communist rule. Quite clearly that had to mean the actual commission of crimes and not merely the fact of belonging to official organizations and bodies which were seen in retrospect to have been responsible for the relevant policy decisions, such as membership of the Communist Party Politburo.

10. Legal proceedings had been taken against persons suspected of having inflicted torture or allowing it to be inflicted, and a number of convictions had been obtained. Some defendants were still on trial at the present time.

11. Concerning compensation for suffering incurred at the hands of the authorities, he said that cases dating from the immediate post-War period were obviously difficult to resolve because of the lapse of time. Victims of ill-treatment under the totalitarian regime and notably during the past 10-20 years were being compensated, legislation having established the liability of the State: that was the case not only of the ethnic Turks, which he had mentioned at the previous meeting, but of all persons who had been held in concentration camps, deported or otherwise victimized by the regime. Former political prisoners had had their civil and political rights restored and received financial compensation; in the case of deceased persons, damages were awarded to their families. Dismissal from employment as a result of discrimination during the totalitarian period had been rectified by reinstatement, particularly in the academic field (the current President of the Republic was one notable dissident who had been so rehabilitated, before assuming his high office). The question of prohibiting senior members of the former State hierarchy from holding responsible posts in the new Bulgaria had been discussed at length; the idea of a blanket ban had been discarded in favour of an examination of each individual case, attention being paid to the actions of the person concerned rather than to his or her previous function. Several laws had been adopted in that connection; others had been set before Parliament, but their consideration had been deferred because of the greater urgency of other matters. In one instance (related to the Banks and Credit Act), a provision whereby officials of the former regime would have been banned from holding office on the boards of banks and finance institutions had been ruled unconstitutional by the Constitutional Court, and duly revoked. The Constitutional Court had, however, endorsed a temporary five-year ban preventing persons prominent in the previous hierarchy from holding positions in the governing bodies of scientific organizations. There were currently no political prisoners in Bulgaria. As for witch-hunts, he acknowledged that the danger had existed and that pressures had been exercised in that direction. Thus far, however, excesses had been resisted and avoided.

12. To Mr. Fodor and others who had asked questions about minorities, he first pointed to a small but significant nuance of terminology: "minorities" was not a term used in Bulgarian law; reference was rather to ethnic, linguistic or religious minority groups, and that was the sense in which the Government had addressed the provisions of article 27 of the Covenant. He would have more to say on that matter later in the dialogue. The situation had improved radically since the pre-1990 period, many effective measures having been taken to protect minority concerns, both at home and abroad (such concerns were, for example, mentioned in treaties of friendship signed between Bulgaria and Hungary and between Bulgaria and the Republic of Moldova). He had provided information on the subject at the previous meeting, but had neglected to state that Bulgaria at present had two Christian seminaries, in Sofia and Plovdiv, and three Muslim colleges.

13. Pursuant to the Constitution, persons belonging to ethnic groups were free to study their mother tongue at Bulgarian schools. During the 1992-1993 academic year, some 53,900 persons were exercising that right, 52,000 of them studying Turkish (under 815 teachers); about 1,300 studying the Gypsy language, under 12 teachers (although there was a major difficulty in determining which of the many dialects should be taught); 118 studying Armenian (under 3 teachers); and 119 studying Hebrew (under 11 teachers).

A great deal of attention had been paid to the situation and needs of the Gypsy population, as he had indicated at the previous meeting. He wished to add that, in the matter of living conditions, attempts at relocation from insalubrious accommodation into modern homes could be hampered not only by financial and administrative difficulties, but also by the reluctance of the communities concerned to accept the move. That and other problems were being studied by a presidential team of specialists, which had already made a number of interesting proposals. He hoped that it would be possible to announce substantial progress in Bulgaria's next periodic report.

14. Several members of the Committee had inquired about the application of article 4 of the Covenant. According to article 57 (3) of the Bulgarian Constitution, following a proclamation of war, martial law or a state of emergency the exercise of individual civil rights might be temporarily curtailed by law. Under article 100 (5) of the Constitution, the President was empowered to proclaim martial law or any other state of emergency (for example, as the result of an earthquake or other natural catastrophe) whenever the National Assembly was not in session and could not be convened. But the National Assembly was to be convened forthwith to endorse such a decision.

15. Concerning the dissemination of information on the rights recognized in the Covenant and in the First Optional Protocol, he said that, with the help of the Centre for Human Rights, the texts of those instruments had been published, together with the remainder of the International Bill of Human Rights, in a Bulgarian version of the Compilation of International Instruments. Special efforts were being made - notably by the Ministry of Justice - to enhance awareness of the Covenant, and of the European Convention on Human Rights, among members of the country's legal and administrative apparatus. Seminars and lectures had been organized with the participation of specialists from the Council of Europe and the United Nations Centre for Human Rights. Human rights was a subject taught in schools and universities, and now featured in the curricula of the faculties of law at Sofia, Plovdiv and Burgas.

16. One matter which had perhaps not been adequately explained was the organic relationship between the Covenant and international treaties and Bulgarian domestic legislation. He had already referred to the question of the promulgation and entry into force of international treaties. Pointing out that such treaties could contain provisions that were directly applicable, as well as clauses that required transformation to be fitted into national legislation, he said that Bulgarian jurists took the position that, even if an international treaty was directly applicable, everything possible must be done to ensure that there was no risk of contradiction with domestic legislation, even though it was laid down in the Constitution that, in the event of such a conflict, precedence would be given to the international instrument. Bulgaria so far did not have a great deal of experience in the matter, but he was sure that members of the Committee would appreciate from experience in their own countries that constitutional provisions which established the precedence of international instruments took time to filter down to the level of the courts.

17. Regarding Miss Chanet's question concerning application to the Constitutional Court, he said that, pursuant to article 150 of the Constitution, the Court could act only on an initiative from not fewer than

one fifth of all members of the National Assembly, the President, the Council of Ministers, the Supreme Court of Cassation, the Supreme Administrative Court or the Chief Prosecutor. Responding to a question by Mr. Mavrommatis on the status of the Constitutional Court, he said the fact that, in the Constitution, separate chapters were devoted to the Court, on the one hand, and to the judicial power, on the other, reflected the decision, after much debate, that the Court should be set above the entire system of State authority: in fact, it acted in total independence, and administered its own budget. According to article 151 (ii) of the Constitution, the rulings of the Court, which were binding on all State bodies, must be promulgated in the Official Gazette within 15 days of the date on which they were issued; rulings came into force three days after promulgation; any act found to be unconstitutional ceased to apply as of the date on which the Court's ruling came into force.

18. The liability of the State, which he had just alluded to in reference to compensation, was established in article 7 of the Constitution, which rendered the State liable for any damage caused by illegitimate rulings or acts on the part of its agencies and officials. That basic principle had already been translated into Bulgarian law. In response to a question by Mr. Lallah, he said that while, as a general rule, it was the lawyer's client who paid for legal services, provision was made in the Code of Criminal Procedure for legal aid; for example, the State paid the fees of court-appointed lawyers.

19. In response to a question by Mr. Prado Vallejo, he confirmed that, in view of the Covenant's status in the domestic legal system, all the parties to a law suit could invoke its provisions before the courts. Although he was not in a position to produce court records, he was certain that that had already occurred in practice. In that connection, he acknowledged that the statement in paragraph 11 of the report according to which the protection of citizens' rights was assured ex officio by the judicial authorities, without the need for a claim from a plaintiff, was somewhat misleading. A court must obviously be seized of an issue, including any issue arising under the Covenant, before it could take action; claims could be laid by plaintiffs or by the prosecutor, who was obliged under the Constitution to protect the human rights of citizens. Courts were, however, required to apply the Covenant, as an integral part of domestic law, on their own initiative, whenever its provisions were relevant.

20. Questions had been asked concerning the monitoring of respect for human rights and the possibility of establishing an Ombudsman's Office. That question had been discussed at length during the drafting of the Constitution, and it had finally been decided not to create such an institution for the time being. He pointed out that the Parliamentary Human Rights Commission exercised certain functions and assumed certain duties that resembled, but certainly did not replace, those of an Ombudsman. No State body was officially responsible for monitoring the observance of human rights, but that was done in one way or another by some 30 non-governmental organizations (NGOs), a dozen or so of which were very active both within and outside Bulgaria.

21. With regard to past human rights violations, there had been cases in which proceedings had been brought against the employees of concentration camps who had tortured detainees, or through negligence had allowed the perpetration of such acts. However, one issue that had not been resolved was that of the time-limits that might be applicable to actions relevant to the provisions of the Covenant and the Universal Declaration of Human Rights, since the cases currently before the courts in Bulgaria dated from around 1950. The opinion currently held in Bulgarian legal circles was that those cases should not be subject to the statute of limitations. Compensation for the victims of acts of torture was provided for under Bulgarian legislation.

22. As to the question raised concerning crimes against society, he admitted that it was a difficult concept to define, not only under Bulgarian legislation but also in the international texts on which such legislation was based, such as the decisions of the Nürnberg Tribunal. There were two chapters in the Bulgarian Penal Code dealing with breaches of wartime laws and customs, genocide and apartheid, which could all be classified as crimes against society. However, not all the violations in question fell into those categories. For instance, attempts at bringing legal proceedings against the persons involved in the campaign to change the names of members of the Turkish minority had proved unsuccessful, since such violations, albeit serious, could not be legally defined as genocide.

23. While it was true that the report had not been published or discussed in public - the Committee's recommendations in that connection would be followed up in future - it was worthwhile noting that the Ministry of Foreign Affairs had involved many representatives from the different State bodies in its preparation. Furthermore, the summary records of the dialogue with the Committee as well as its final comments on Bulgaria's report would be discussed in the country with the NGOs concerned. The Bulgarian delegation took the view that the broadest possible discussion on human rights issues was desirable in order to facilitate the proper implementation of the provisions of the Covenant.

24. With regard to the ethnic minorities in the country, he pointed out that, unlike Hungary and Austria, Bulgaria had no specific legislation relating to those groups. That shortcoming had been recognized and the possibility of introducing new legislation was being considered.

25. In reply to Mr. El Shafei's question regarding the Muslim community, he pointed out that the largest ethnic minority in Bulgaria was the Turkish community followed by the Gypsies, who were, however, much smaller in number.

26. He would address the queries relating to the administrative courts in connection with section II of the list of issues.

27. Mr. NDIAYE inquired whether the new Bulgarian Government had taken any decision concerning obligations under treaties which had been signed by the former regime.

28. Mr. DIMITRIJEVIC said that he was satisfied with the explanation provided by the Bulgarian delegation concerning the reference in the Constitution to the traditional religion. However, he sought clarification regarding the

statement in the publication relating to the demographic situation of Bulgaria, an abscract of which had been circulated to members for information, to the effect that the official religion in the country was Eastern Orthodox Christianity. He suggested that the official publication in question should be updated in order to avoid any misunderstanding.

29. Mr. KOULISHEV (Bulgaria), responding to Mr. Ndiaye's query, said that the Bulgarian Government honoured all its obligations under international treaties signed by the former regime. Any abrogation of the treaties in question was carried out in conformity with the Vienna Convention on the Law of Treaties, as in the case of Bulgaria's withdrawal from the Warsaw Pact.

30. Mr. Dimitrijevic's query appeared to have been prompted by a translation error. The Bulgarian text stated that the dominant, or majority, religion in the country was Orthodox. The use of the words "official religion" was certainly not in conformity with the relevant provisions of the Constitution. He assured Mr. Dimitrijevic that the Orthodox Church had no precedence over other religions practised in the country.

31. The CHAIRMAN invited the Bulgarian delegation to respond to the questions in section II of the list of issues, which read:

"II. Right to life, treatment of prisoners and other detainees, forced labour, and liberty and security of the person (arts. 6, 7, 8, 9 and 10)

(a) What has been the outcome of the discussion before the National Assembly on the abolition of the death penalty (see para. 57 of the report)?

(b) What are the rules and regulations governing the use of weapons by the police and security forces? Have there been any violations of these rules and regulations and, if so, what measures have been taken to prevent their recurrence?

(c) What concrete measures have been taken by the authorities to ensure the observance of article 7 of the Covenant? Can confessions or testimony obtained under duress be used in court proceedings?

(d) Please clarify the compatibility of the procedural rules on detention described in paragraphs 75 and 85 of the report with article 9, paragraphs 3 and 4 of the Covenant.

(e) Please provide information on arrangements for the supervision of places of detention and on procedures for receiving and investigating complaints.

(f) Are the United Nations Standard Minimum Rules for the Treatment of Prisoners complied with? How have these provisions been made known to the concerned police, armed forces, and prison personnel as well as, in general, to all persons responsible for holding interrogations?

(g) Please provide further information on the operation of the Liability of State for Harm to Citizens Act (see para. 36 of the report)."

32. Mr. KOULISHEV (Bulgaria), replying to question (a), said that the abolition of the death penalty had been the subject of much debate in the National Assembly in connection with the drafting of the Constitution. The Assembly had remained divided on the issue and decided that it should be resolved when the new Penal Code was drafted. As a result, since 1990 there had been a moratorium on executions pending the introduction of new legislation.

33. As indicated in the report, in recent years there had been a sharp decline in the number of death sentences passed. No such sentences had been handed down in 1991 or 1992 and only one had been passed in 1993 in the case of a particularly brutal murder, the perpetrator of which had not yet been executed.

34. Public opinion was also divided on the question of the abolition of the death penalty. By and large lawyers tended to be in favour of replacing the death penalty with life sentences, and two draft bills had been submitted to the National Assembly along those lines. However, surveys indicated that a large segment of the population preferred to retain the death penalty for the gravest crimes, particularly in view of the steady rise in brutal murders of women and children. Public pressure was such that recently two National Assembly deputies had submitted a draft bill with the aim of ending the moratorium on the application of the death penalty, which was, however, unlikely to be enacted.

35. With regard to question (b), he said that article 25 of the police regulations contained the relevant provisions. Weapons could only be used by the police as a last resort, inter alia in cases of self-defence, in order to detain a person who was regarded as a threat to public safety or in cases of armed resistance. The regulations were particularly stringent regarding the use of weapons against pregnant women or minors. The Council of Ministers had presented a bill for the amendment of the police regulations which would bring its provisions relating to the use of weapons more into line with the Covenant. One of the proposed new provisions would require police officers who resorted to the use of weapons to submit a report providing details of the incident.

36. Regarding question (c), he referred members of the Committee to paragraphs 59 to 65 of the report, which described measures taken by the Bulgarian authorities to ensure the observance of article 7 of the Covenant. There had been no recorded cases of torture or cruel, inhuman or degrading treatment in recent years. However, in the light of the revelations of abuses in Bulgarian prison camps between 1950 and 1956, the authorities had instituted legal proceedings against employees who had tortured detainees or allowed such acts to be perpetrated. The director of one prison camp had been brought to trial for the murder of prisoners.

37. Under article 31 of the Constitution confessions obtained under duress were not admissible as evidence in court proceedings. Moreover, convictions could not be made solely on the basis of confessions: other forms of evidence were required, as envisaged by article 91 of the Penal Code. The use of force by any State official for extracting statements from accused persons, witnesses or court experts was a punishable offence under article 287 of the Penal Code.

38. With regard to the question raised under paragraph (d), he stressed that detention was applied in exceptional circumstances for crimes subject to more than 10 years' imprisonment or the death penalty. As indicated in article 152 of the Code of Criminal Procedure, the prosecutor could resort to a less severe measure when there seemed to be no danger of the accused trying to escape or commit another crime. On the other hand, detention could be ordered for persons accused of lesser crimes, where it seemed likely that they might escape or commit other crimes. Detention ordered by the investigating authorities was generally subject to the prosecutor's approval. The cases in which the examining magistrate need not await the prosecutor's approval were listed in paragraph 75 of the report. In accordance with article 202 of the Code of Criminal Procedure, in such cases the investigating magistrate was obliged to notify the prosecutor concerned within 24 hours.

39. The information contained in paragraph 85 of the report was based on legislation in force until 1990. However, that same year article 152 of the Code of Criminal Procedure had been amended to the effect that any person detained might appeal against the detention order before a court of law irrespective of the source of the order. In other words, as from 1990 the provisions of the criminal law had been in conformity with the appeal procedures envisaged under article 9 (4) of the Covenant. The only possible remaining discrepancy was that the Covenant recommended that the court should decide "without delay" on the lawfulness of detention, whereas Bulgarian law stipulated a deadline of three days. Since in Bulgaria such cases came under the competence of the departmental courts, of which there were only 28 at present, it was impossible for logistical reasons for the courts to take decisions on such cases any sooner.

40. As to the information requested under section II (e), he said that the head of the prison service and the Minister of Justice were responsible for supervising penitentiary establishments. Other places of detention were supervised by the director of the institution in question and were also inspected by local prosecutors. Court officials had access to prison establishments to investigate complaints and take action deemed necessary. Another recent development was that journalists were now allowed to enter prisons and meet inmates. Special committees had been set up to monitor prison conditions and facilities. They suggested possible improvements to the prison service and their advice was sought in connection with proposed pardons.

41. On paragraph (f), he said that the United Nations Standard Minimum Rules for Treatment of Prisoners had been translated into Bulgarian and were available in public libraries. Many of their requirements were covered by Bulgarian legislation relating to penalties. No discrimination of any kind was tolerated in prisons. Orthodox chapels which had been closed under the

former regime were now being reopened, and prisoners of other religious persuasions were free to practise their faith. Women were interned in separate quarters and due account was taken of prisoners' age and previous convictions and the type of crime they had committed.

42. One of the major problems for the Bulgarian prison authorities at the present time was the current state of disrepair of the buildings, many of which dated from the pre-1950 period. Regrettably, the economic situation was such that it was not possible to make any substantial improvements in that regard. There were no longer any restrictions on correspondence, unless it was suspected that the prisoner was planning to escape or commit a further crime. Prisoners were entitled to appeal against sanctions imposed by the prison administration and complaints in that connection were referred to the Minister of Justice through the appropriate channels. Prisoners were kept informed of how much of their sentence they had already served; they were entitled to compensation in the event of unlawful detention.

43. The aim of the Liability of State for Harm to Citizens Act, referred to under paragraph (g), was to compensate citizens for damage caused by illegal acts on the part of the executive or the judiciary. The provisions of the Act were most frequently invoked in respect of the latter in cases of unlawful detention or prison sentences handed down that were longer than necessary. The amount of compensation was determined in consultation with the body concerned or by judicial means. Paragraph 36 of the report listed the legislation introduced by Parliament to restore the rights of citizens violated under the totalitarian regime resulting in loss of property. Compensation for other types of damage during detention in concentration camps or deportation was covered by relevant legislation on the restoration of civil and political rights. Victims received financial compensation which was commensurate with the damage suffered.

44. The CHAIRMAN invited the delegation of Bulgaria to respond to the questions under section III of the list of issues, which read:

"III. Right to a fair trial (article 14)

(a) Please clarify what is meant by 'the judiciary power' in paragraph 19 of the report.

(b) What guarantees are there for the independence and impartiality of the judiciary? Please provide information on provisions governing the tenure, dismissal and disciplining of members of the judiciary.

(c) Please clarify whether the Supreme Administrative Court provided for in article 125 of the new Constitution has been established and, if so, provide information on its composition and functions (see para. 34 of the report)."

45. Mr. KOULISHEV (Bulgaria), referring to question (a), said that the judiciary power was exercised by three bodies which were totally independent of each other, namely the courts, the prosecutors and the investigating

authorities. Their specific duties were laid down by the Constitution. The courts ensured the administration of justice in the country, whereas the prosecutors ensured that the laws of the land were observed.

46. In addition to their normal responsibilities in connection with criminal suspects and their trials, prosecutors supervised the application of penal measures and were entitled to request the abrogation of unlawful acts on the part of the judiciary or executive as well as to refer unconstitutional acts to the Constitutional Court. The investigating authorities merely conducted preliminary inquiries into crimes.

47. Although totally independent from the courts, both the Prosecutor's Office and the investigating authorities had a structure corresponding to that of the courts. Some of the acts of the Prosecutor's Office were subject to supervision by the courts - for instance, detention orders which were the subject of appeals.

48. With regard to paragraph (b), he underlined the fact that the Bulgarian legislature recognized the importance of independent and impartial courts as a means of ensuring respect for human rights and freedoms. That had been one of its major concerns when drafting the Constitution, as borne out by the adoption of new legislation relating to the powers of the judiciary.

49. The Constitution drew a clear distinction between the judicial and legislative powers on the one hand and the executive power on the other. For instance, the executive had no say in the appointment or dismissal of judges, prosecutors or magistrates. The judiciary had its own budget set by the National Assembly and had exclusive responsibility as to how it should be used.

50. Judges, prosecutors and magistrates were granted lifelong tenure 3 years after their initial appointment. Other than in the case of retirement or resignation they ceased to hold office only if imprisoned for premeditated crimes or incapacitated from performing their duties.

51. In accordance with the provisions of the Constitution, the activities of the judiciary were supervised by the Supreme Judicial Council. It was composed of 25 members, 11 of whom were elected by the National Assembly and a further 11 by the competent judicial bodies. The Presidents of the Supreme Court of Cassation, the Supreme Administrative Court and the Prosecutor-General also sat as ex officio members.

52. Judges enjoyed immunity of process unless otherwise decided by the Supreme Judicial Council. The State bore full responsibility for action taken by judges in the discharge of their duties. The Supreme Judicial Council appointed and dismissed judges by secret ballot.

53. Procedures for the application of disciplinary sanctions were different for each of the three branches of the judiciary. Sanctions were imposed by the Supreme Court of Cassation, the Prosecutor-General and Head of the investigating authorities for judges, prosecutors and magistrates respectively.

54. Referring to question (c), he said that the Supreme Administrative Court had not yet been established pending the enactment of the Judicial Powers Act, currently being examined on second reading by the National Assembly. Admittedly the current transitional phase gave rise to certain problems, which were covered by clause 2 of the transitional and concluding provisions of the Constitution.

55. An interesting recent case had been the dismissal of the head of the Bulgarian telegraph agency. Invoking the provisions of the Constitution, he had objected to his dismissal on the grounds that he had been appointed by the President of the Republic. The case had raised the issue of whether the Supreme Court of Cassation could overturn decisions of the Council of Ministers. The Constitutional Court had ruled that it was empowered to so do, under the provisions of the clause to which he had referred. Such problems would, of course, be resolved when the Supreme Administrative Court was finally set up.

56. Mr. AGUILAR URBINA welcomed the current moratorium on the application of the death penalty, but asked for clarification regarding the "crimes affecting society in general" and "crimes against the State" for which it could be imposed (para. 52 of the report). Had those categories formerly included economic crimes such as illicit currency dealings? If so, had the legislation now been altered?

57. He expressed concern at the apparently excessive power wielded by the prosecutors. According to paragraph 74 of the report, judges, prosecutor and investigating magistrates were independent of one another. However, paragraph 116 stated that the prosecutor was the accusing party; and according to paragraph 75, it was the prosecutor who decided whether a person was to be detained. Furthermore, when the investigating magistrate found that sufficient grounds existed to detain a person, the approval of the prosecutor must be sought. The prosecutor was thus both party and judge. Were any measures envisaged to rectify that state of affairs?

58. According to paragraph 116 of the report, the accused was presumed innocent until proved otherwise; and paragraph 124 stated that the courts were obliged to respect the rule of non bis in idem. Yet, according to paragraph 77, detention could be imposed to prevent the accused from fleeing or committing another crime - a statement that seemed incompatible with the presumption of innocence. According to paragraph 78, in determining restrictive measures, due consideration was given to "other individual characteristics". Might those characteristics include the fact that the accused had already committed other crimes? If so, there would be a contradiction with the principle of non bis in idem.

59. Miss CHANET supported Mr. Aguilar Urbina's request for elucidation of the "crimes against the State" referred to in paragraph 52. Had there been any developments regarding the definition of those crimes? Was there any possibility of amending article 42 of the recent Constitution, the necessity and fairness of which were questioned in paragraph 92 of the report? She also shared Mr. Aguilar Urbina's concerns regarding the powers of the prosecutors. Why was the prosecutor not required to seek authorization from a magistrate

before detaining a person? That power appeared to violate the provisions of the Covenant, and also those of the European Convention on Human Rights.

60. There appeared to be a contradiction between paragraphs 67 and 70 of the French version of the report. According to paragraph 67, there was no provision for forced labour (travail forcé) in Bulgarian penal law; however, paragraph 70 described a system of "correctional labour" (travail obligatoire). What was the distinction between the two regimes? Lastly, paragraph 71 referred to crimes "similar in essence to those under article 8 of the Covenant". However, the article in question contained no reference to the crimes enumerated in paragraph 71.

61. Mrs. HIGGINS noted a discrepancy between article 29 of the Constitution and article 7 of the Covenant. The Covenant prohibited "cruel, inhuman or degrading treatment or punishment"; whereas the Constitution prohibited only "cruel, inhuman or degrading treatment". Was the omission of a reference to punishment an oversight?

62. Article 29 (4) of the Constitution stated that "Everyone shall be entitled to legal counsel from the moment of detention or from the moment of being charged." She asked for clarification of that provision, in view of the fact that the moment of detention might significantly precede the moment of being charged.

63. Paragraph 72 of the report claimed that article 30, paragraphs 1 and 2 of the Constitution reflected in full the provisions of article 9 of the Covenant. However, in point of fact, those clauses fell considerably short of the guarantees provided under article 9. Specifically, paragraph 77 of the report stated that detention could be applied where the crime carried a penalty of over 10 years' imprisonment. However, the reasoning that it was legitimate to detain a person who, if found guilty, would be sentenced to a long period of imprisonment ignored the presumption of innocence, and was incompatible with the provisions of article 9. The Committee had consistently taken the view that pre-trial detention was permissible only where there was a danger that evidence might be tampered with or that the accused might commit further crimes or abscond.

64. According to paragraph 82 of the report, the Chief Prosecutor could extend the term of the investigation beyond the legal two-month period. She pointed out that, in its case-law regarding the requirements of promptness under article 9 of the Covenant, the Committee had found that a period considerably shorter than two months was already excessive. Lastly, concerning article 14, the report provided no information on the law schools. She asked what measures were taken at the training stage to inculcate a proper spirit of professionalism and independence in lawyers and to ensure that they always acted with the interests of the client in mind.

65. Mr. FODOR asked for details of Bulgaria's experience with the "correctional labour" to which reference was made in paragraph 70. Other countries had experienced problems in applying similar systems. Would it be feasible to replace that penalty by a fine?

66. On article 9, he asked for fuller information concerning the oath referred to in paragraph 76. Did its wording accommodate the views of groups such as atheists? How widely was the home arrest referred to in that same paragraph applied, and to what categories of person? According to paragraph 84, the number of investigations had almost doubled in 1991 as compared to the previous year. What was the reason for such a marked increase? Submission of data for 1992 would enable the Committee to gauge the underlying trend.

67. On article 10, he asked for information on detention in mental health institutions, on the rules applicable in such cases, and on the guarantees available to persons so detained. On article 14, he noted that, according to paragraph 120, special courts for minors did not exist in Bulgaria. Had the possibility of establishing such courts been raised in the context of the reform of the judicial system? Lastly, he noted that the new Constitution provided for the building of a three-tier system. Such a system had its advantages, but also its drawbacks, such as the prolongation of the criminal process. What reasons had prompted the introduction of the new system, and what had been the deficiencies of the two-tier system?

68. Mr. WENNERGREN said that he, too, was concerned at the powers of the prosecutor as described in paragraph 75. Article 9 (3) of the Covenant provided that anyone arrested or detained on a criminal charge should be brought promptly before a judge, who thus had authority over police and prosecutor; but under the Bulgarian system the prosecutor came under the police and the judge.

69. Reports had been received from NGOs alleging ill-treatment of individuals, and especially of members of the Roma community. The reports of recent police violence in Pazardzhik were particularly disquieting. What investigations had been carried out, had any disciplinary action been taken, and what had been done to prevent a recurrence of such incidents?

70. Mr. BRUNI CELLI welcomed the information that the death penalty was currently under review, in the light of the worldwide trend towards its abolition. He noted, however, that some of the criminal offences enumerated in paragraph 52 for which the death penalty was provided could more properly be regarded as political offences.

71. On the question of torture, Bulgaria had ratified the Covenant many years previously, but the totalitarian regime had continued to violate its provisions. In dealing with those violations, it must be borne in mind, first, that justice rather than vengeance was the objective sought; and, secondly, that attempts to wipe the political slate clean by granting impunity were likely merely to encourage the continuation of such practices. In that regard, it might be inferred from paragraph 60 of the report that few if any genuinely active steps were taken by the State to investigate such violations or to prosecute offenders in accordance with its obligations under international instruments and the Constitution. The final sentence of paragraph 62 reflected a similarly passive attitude: the onus was not on prisoners to demand that they should not have degrading treatment inflicted on them; it was for the State to guarantee that they were not subjected to such treatment.

72. Finally, he asked for further information regarding the correctional facilities referred to in paragraphs 97 and 98. Did those facilities constitute a separate system? Who was empowered to decide what persons should be so detained and for how long? Why were accused persons as well as convicts detained in such premises?

73. Mrs. EVATT joined other members in requesting clarification of the roles of the prosecutor, the examining magistrate and the judge in pre-trial detention and the appeal process, taking account of the fact that all three were apparently part of the judicial branch of government. She also noted the rather ominous statement in paragraph 119 (a) that it was impossible to provide any figures about violations of the obligation referred to therein. Was any information available to suggest that more needed to be done to reinforce that particular provision?

74. Mr. NDIAYE asked how the percentage of remuneration retained by the State, to which reference was made in paragraph 70, was determined. He also asked whether there was a problem of overcrowding in Bulgaria's prisons.

The meeting rose at 5.55 p.m.